

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 547 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

STATE OF GUJARAT

Versus

GAMJIBHAI @ RAMKISHAN MOTIJI VISHNOI

Appearance:

MS BR GAJJAR, APP for Petitioner

MS KUSUM M SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/09/98

ORAL JUDGEMENT

Heard Ms. B.R. Gajjar, learned A.P.P. for the petitioner-State, and Ms. Kusum M.Shah, learned advocate for respondent.

2. The petitioner-State has challenged the legality,

validity and propriety of the order passed by learned Additional Sessions Judge, Banaskantha District at Palanpur, dtd.31.5.1997, below Exh.9, in the proceedings of Special Case No.1/96. The petitioner-State has also prayed to quash and set aside the direction given by learned Additional Sessions Judge, to file a separate charge-sheet against accused no.2 of Special Case No.1/96 i.e. present respondent of Sanchor, Rajasthan, for the seizure of 470 grams opium recovered by Investigating Officer from the premises of respondent at Sanchor on receipt of information.

3. Ms. Kusum M.Shah, learned advocate appearing for the respondent has produced on record a certified copy of judgment and order rendered by the court of 2nd Extra Assistant Judge and Addl.Sessions Judge, Banaskantha at Palanpur, in the matter of Special Case No.1/96, pronounced on 29.4.98, which is taken on record.

4. The prosecution case in respect to Special Case No.1/96, briefly be stated as under:

That P.S.I. Shri Chaudhari of LCB Branch, Palanpur, received information on 12.11.95 to the effect that one person is dealing in opium, charas and ganja etc., near Palanpur-Deesa cross road between 16.00 hrs to 20.00 hrs, and as such, P.S.I. Shri Chaudhari arranged a raid after intimating vide report Exh.39 to D.S.P. That in the company of unarmed Head Constable Meghrajibhai Nathabhai and two panch witness Kamleshkumar Shyamlal Sindhi and Prakashkumar Mafatlal Padhiar, carried out preliminary panchnama and thereafter proceeded to the place stated in the information. That raiding party found one auto-rickshaw bearing Registration No.GJ-T-535 on Palanpur-Deesa cross road; on the same day at about 16.40 hrs. That one person who was sitting in the said auto-rickshaw having seen the police party got out from the rickshaw and threw outside a packet which was in his hand and bolted behind hotel Lajwanti. That subsequently the police recovered and seized the packet threw away by the said person and on inquiry found that it contained opium and as such seized the same under the panchas. That thereafter P.S.I. carried out further procedure of seizing the said article for sending the same to FSL test. That during further investigation, one Yusuf Taja (accused no.1 in Sessions Case No.1/96) was apprehended, and from his interrogation received the information to the effect that said contraband opium seized by the police was supplied to said Yusuf Taja by present respondent and respondent had been dealing in supply of opium and other contraband narcotic drugs from his

premises at Sanchor. On the basis of the said information, P.S.I. Chaudhari carried out raid at the premises of present respondent at Sanchor, Rajasthan, and recovered 470 grams opium under a panchnama. That said article was also seized and sealed in the presence of panchas and respondent was arrested and offence was registered against Yusuf Taja and present respondent under section 17 and 29 of Narcotic Drugs & Psychotropic Substances Act, 1985, (hereinafter referred to as NDPS Act).

5. It may be noted that on the basis of above stated investigation, present respondent alongwith Yusuf Taja were sent into judicial custody and the chargesheet was filed against them. That in the proceedings of said Special Case No.1/96, present respondent as accused no.2 moved an application Exh.9, dtd.1.3.97, contending that Sessions Court at Palanpur has no jurisdiction to investigate and try any offence which had taken place outside the territorial limit of State of Gujarat. That contraband opium of 470 grams had been recovered from Sanchor at Rajasthan, and thereby offence, if any, in respect to possessing contraband narcotic drugs had been committed at Sanchor, and only a competent court at Sanchor, Rajasthan has jurisdiction to try the respondent for the said offence. On the said facts, respondent prayed that respondent no.1 as accused no.2 of Special Case No.1/96 be discharged.

6. That the learned Additional Sessions Judge, Palanpur, heard the said application and vide impugned order dtd.31.5.97, rejected the application of respondent holding that so far as contraband article of 100 gram opium recovered by P.S.I. Chaudhari from Palanpur-Deesa cross road the respondent appears to have abetted accused No.1 Yusuf Taja in committing the said offence, and thereby he should be tried at Palanpur Sessions Court for offences punishable under section 17 of N.D.P.S. Act. The court further directed the investigating officer to file a separate charge-sheet in respect to seizure of 470 grams opium from the premises of respondent at Sanchor in Rajasthan, in the competent court at Sanchor.

7. That above stated order of Addl.Sessions Judge, Palanpur, dtd.31.5.97 is challenged by the State in the present revision application.

8. Ms. B.R. Gajjar, learned A.P.P., has vehemently urged that respondent is found to have been dealing in narcotic drugs from his premises at Sanchor in Rajasthan, and he has been supplying the same within the territorial

limit of State of Gujarat and District Banaskantha. To that extent, the order of learned Addl.Sessions Judge is erroneous and deserves to be set aside.

9. As against that, Ms. Kusum Shah, learned advocate appearing on behalf of respondent has urged that, in view of judgment rendered by 2nd Extra Assistant Judge and Addl.Sessions Judge, Palanpur, dtd.29.4.98, in the proceedings of Special Case No.1/96, acquitting present respondent alongwith accused no.1 Yusuf Taja from all the charges levelled against them, the present proceedings of Revision Application are infructuous and should be disposed of.

10. I have carefully gone through the papers on record and in view of certified copy of judgment rendered by 2nd Extra Assistant Judge and Additional Sessions Judge, Palanpur, dtd.29.4.98, in the proceedings of Special Case No.1/96, there cannot be any doubt that revision application challenging the legality, validity and propriety of order passed by Additional Sessions Judge, Palanpur, dtd.31.5.97 below Exh.9 has become infructuous. That even otherwise no revision application could be sustained against the impugned order.

11. On the basis of above stated discussion, present revision application stands disposed of as rejected. Rule discharged.

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